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# **SHOLOM RUBASHKIN FILES NOTICE OF APPEAL TO EIGHTH CIRCUIT COURT**

## ***Former Agriprocessors Executive to Contest Bank Fraud Conviction, 27-Year Prison Sentence***

DES MOINES, Iowa – The legal team representing Sholom Rubashkin has filed a formal notice of appeal of his conviction and sentence for bank fraud and related crimes to the U.S. Court of Appeals for the Eighth Circuit in St. Louis. The appeal comes amid wide criticism of federal prosecutors for their handling of the Rubashkin case and for targeting Rubashkin in an effort to justify the disastrous raid on the Agriprocessors kosher meatpacking plant in Postville, Iowa. Prominent legal scholars are also criticizing the 27-year sentence Rubashkin received last month.

“We will be challenging the conduct of prosecutors in this case, who took extraordinary and improper actions to treat Sholom Rubashkin in a way inconsistent with any other defendant in history,” said Guy Cook, a member of the Rubashkin legal team. “We will also be challenging what is being widely decried as an unfair and unnecessarily long prison sentence.”

Prosecutors multiplied the same charges in seven superseding indictments against Rubashkin, and they brought criminal charges under the 1921 Packers and Stockyards Act for the first time during the 89-year history of the statute for Rubashkin’s very brief delay in payment. Prosecutors also poisoned the bank fraud case by introducing testimony of immigration charges after the District Court had severed the immigration and bank fraud cases to avoid the real danger that a jury would convict Rubashkin on one crime based upon evidence of another, Cook said. Charges related to the employment of illegal immigrants were eventually dropped against Rubashkin.

“We hope that the judges of the Court of Appeals will take a fresh look at the procedures followed by overzealous prosecutors in this case and the numerous instances in which Rubashkin was treated more harshly than similar defendants, from the first indictment to the sentencing recommendation,” said Nathan Lewin, the attorney overseeing Rubashkin’s appeal. “We believe the Justice Department has a responsibility to review this case, and to scrutinize the unprecedented and unjust treatment Sholom Rubashkin has received from prosecutors.”

Rubashkin was also prevented from presenting a vigorous defense, Cook said, due to evidentiary rulings made by the District Court.

“There was no bank fraud,” Cook said. “This case, at its core, is about the fact that Sholom Rubashkin borrowed more money than he was entitled to borrow, but he continued to pay the bank with interest, and the bank turned a blind eye to any alleged overstatement of accounts receivable. Money laundering charges should have been dismissed since the jury found that any funds allegedly laundered were not profits of the enterprise.”

The 27-year sentence will also be challenged, Cook said, because the court failed to consider the undisputed fact that Rubashkin did not intend to cause any loss to the bank. The amount of loss calculated to justify the sentence was grossly exaggerated and was due in part to the bank’s refusal to accept reasonable offers to purchase Agriprocessors after the Immigration and Customs Enforcement raid on the company in May 2008.

The severe prison sentence was handed down after numerous prominent legal scholars protested the life sentence initially recommended by the prosecutors, with more than two dozen former senior Justice Department officials – including six former U.S. attorneys general – criticizing the prosecutors’ recommendation in a letter to Judge Linda Reade. They argued “a sentence of a modest number of years could and would be more than sufficient to serve any and all applicable sentencing purposes.” Rubashkin also garnered support from a wide array of political, legal and community leaders, who expressed dismay that Rubashkin could potentially be given such a harsh sentence.

Rubashkin’s attorneys had asked the court to impose a much more lenient sentence, noting his positive history and character and his extraordinary family circumstances. They emphasized that Rubashkin acted as he did to keep his father’s business operating, that he did not intend any loss to the bank, and that a 72-month sentence would allow the Bureau of Prisons to place Rubashkin in a facility with experience in effectively and humanely incarcerating observant Jewish inmates.

Rubashkin’s sentence is particularly harsh when compared to others convicted of similar crimes. Mark Turkcan, the president of First Bank Mortgage of St. Louis, who misapplied \$35 million in loans, resulting in a loss of approximately \$25 million, was recently sentenced by a federal judge in Missouri to one year and one day in prison.

Rubashkin was cleared by a jury in May of having personal knowledge of, and criminal liability for, the employment of minors at Agriprocessors. That was the only case brought to trial on Rubashkin’s involvement in the hiring practices of Agriprocessors. The federal charges that he was involved in hiring illegal immigrants were dismissed.